

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090538-TP

In the Matter of:

AMENDED COMPLAINT OF QWEST
COMMUNICATIONS COMPANY, LLC AGAINST
MCIMETRO ACCESS TRANSMISSION SERVICES
(D/B/A VERIZON ACCESS TRANSMISSION
SERVICES); XO COMMUNICATIONS SERVICES,
INC.; TW TELECOM OF FLORIDA, L.P.;
GRANITE TELECOMMUNICATIONS, LLC;
BROADWING COMMUNICATIONS, LLC; ACCESS
POINT, INC.; BIRCH COMMUNICATIONS,
INC.; BUDGET PREPAY, INC.; BULLSEYE
TELECOM, INC.; DELTACOM, INC.; ERNEST
COMMUNICATIONS, INC.; FLATEL, INC.;
NAVIGATOR TELECOMMUNICATIONS, LLC;
PAETEC COMMUNICATIONS, INC.; STS
TELECOM, LLC; US LEC OF FLORIDA, LLC;
WINDSTREAM NUVOX, INC.; AND JOHN DOES
1 THROUGH 50, FOR UNLAWFUL
DISCRIMINATION.

RECEIVED-FPSC
12 OCT -8 PM 2:13
COMMISSION
CLERK

_____/

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER PARTICIPATING: COMMISSIONER LISA POLAK EDGAR
PREHEARING OFFICER

DATE: Wednesday, October 3, 2012

TIME: Commenced at 1:30 p.m.
Concluded at 2:07 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER - DATE
06826 OCT-8 2
FPSC-COMMISSION CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

ANDREW M. KLEIN, ESQUIRE, Klein Law Group 1250 Connecticut Ave. NW, Suite 200, Washington, DC 20036, appearing on behalf of BullsEye Telecom, Inc. and Granite Telecommunications, LLC.

MATTHEW FEIL, ESQUIRE, Gunster Law Firm, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301, appearing on behalf of DeltaCom, Inc., Saturn Telecommunication Services, PaeTec Communications, Inc., US LEC of Florida LLC, TWTC and Windstream Nuvox, Inc.

MARSHA E. RULE, ESQUIRE, Rutledge Ecenia, 19 S, Monroe Street, Suite 202, Tallahassee, Florida 32301, appearing on behalf Broadwing Communications, LLC and also putting in an appearance for MICHAEL J. SHORTLEY, III, Broadwing Communications, LLC, c/o Level 3 Communications, 225 Kenneth Drive, Rochester, New York 14623, appearing on behalf of Broadwing Communications, LLC.

DULANEY L. O'ROARK III, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, Six Concourse Parkway, NE, Suite 800, Atlanta, Georgia 30328, appearing on behalf of MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (Continued):

ADAM L. SHERR, ESQUIRE, Qwest Communications Company, 1600 7th Avenue, Room 1506, Seattle, Washington, 98191, appearing on behalf of Qwest Communications Company.

SUSAN M. MASTERSON, ESQUIRE, Qwest Communications Company, 315 S. Calhoun Street, Suite 500, Tallahassee, Florida 32301, appearing on behalf of Qwest Communications Company.

LEE ENG TAN, ESQUIRE and LARRY HARRIS, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Florida Public Service Commission Staff.

MARY ANNE HELTON, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Advisor to the Commission.

P R O C E E D I N G S

1
2 **COMMISSIONER EDGAR:** Good afternoon. I call
3 this prehearing to order. And, as usual, we'll begin
4 with me asking our staff to read the notice, please.

5 **MS. TAN:** Thank you. Pursuant to notice
6 issued September 14th, 2012, this time and place has
7 been set for a prehearing conference in Docket Number
8 090538-TP.

9 **COMMISSIONER EDGAR:** Thank you.

10 And I do understand that we have one
11 participant by phone. So we will take appearances, and
12 let's start there.

13 Mr. Klein, are you with us?

14 **MR. KLEIN:** Yes, I am. Good afternoon.

15 **COMMISSIONER EDGAR:** Good afternoon. Go ahead
16 and introduce yourself, please.

17 **MR. KLEIN:** This is Andrew Klein of Klein Law
18 Group appearing on behalf of Bullseye Telecom, Inc. and
19 Granite Telecommunications, LLC.

20 **COMMISSIONER EDGAR:** Thank you. And I
21 understand that Mr. Klein had some travel difficulties,
22 so he is joining us by phone this afternoon.

23 And then we will continue with appearances
24 beginning to my left, your right.

25 **MR. FEIL:** Thank you, Commissioner.

1 I'm Matthew Feil with the Gunster Law Firm
2 here in Tallahassee. I am representing the entities
3 listed on Pages 1 and 2 of the draft; DeltaCom, Saturn,
4 PaeTec, US LEC, TWTC, and Windstream Nuvox.

5 **COMMISSIONER EDGAR:** Thank you.

6 **MS. RULE:** Marsha Rule of Rutledge Ecenia,
7 here on behalf of Broadwing Communications, and also
8 entering an appearance for Michael Shortley, whose
9 address I've provided to staff.

10 **COMMISSIONER EDGAR:** Thank you.

11 **MR. O'ROARK:** And I am De O'Roark representing
12 MCImetro Access Transmission Services, LLC, doing
13 business as Verizon Access Transmission Services.

14 **COMMISSIONER EDGAR:** Thank you.

15 **MR. SHERR:** Good afternoon. Adam Sherr on
16 behalf of Qwest Communications Company.

17 **MS. MASTERTON:** And Susan Masterson also on
18 behalf of Qwest Communications Company.

19 **COMMISSIONER EDGAR:** Thank you. And our
20 staff.

21 **MS. TAN:** Lee Eng Tan on behalf of Commission
22 staff, and entering an appearance for Larry Harris.

23 **MS. HELTON:** And Mary Anne Helton, Advisor to
24 the Commission.

25 **COMMISSIONER EDGAR:** Okay. Before we move to

1 the draft prehearing order, which I do understand
2 everybody has a copy of, is that correct?

3 Okay. And, Mr. Klein, do you have a copy of
4 the draft prehearing order?

5 **MR. KLEIN:** Yes, I do. Thank you.

6 **COMMISSIONER EDGAR:** Okay. Before we move to
7 that, let me ask our staff if we have any preliminary
8 matters to address.

9 **MS. TAN:** Yes, we do. Qwest has filed three
10 notices of voluntary dismissal with prejudice that it
11 would like to be acknowledged. They are for Windstream
12 NuVox, US LEC of Florida, LLC, PAETEC Communications,
13 Inc, Budget Prepay, Inc., DeltaCom, Inc., Saturn
14 Telecommunications Services, Inc. doing business as
15 EarthLink Business.

16 **COMMISSIONER EDGAR:** Thank you. And those, of
17 course, will be recognized and acknowledged as a matter
18 of right. And I'll ask our staff to reflect that in the
19 prehearing order when it is finalized.

20 **MS. TAN:** Yes. And we will adjust the
21 prehearing order accordingly.

22 **COMMISSIONER EDGAR:** Thank you.

23 Any other matters at this time? Anything?
24 No. Okay.

25 **MS. MASTERTON:** Is this is the appropriate

1 time -- we have a motion for surrebuttal pending, but we
2 have reached a stipulation with Broadwing on factual
3 issues, and therefore we are going to withdraw that
4 motion. And we can do that in writing after the
5 prehearing, if that's what the Commission -- if y'all
6 would prefer us to do it that way, but we are
7 withdrawing the motion.

8 **COMMISSIONER EDGAR:** Okay. And that, of
9 course, I believe, is covered in Section XI of the
10 prehearing order, so --

11 **MS. MASTERTON:** Yes. That's fine. I didn't
12 know whether you wanted me --

13 **COMMISSIONER EDGAR:** That's okay. Thank you
14 for raising it, and we will come back to that, if we
15 can, just as we work through the draft order in order.

16 **MS. MASTERTON:** Okay. Thank you.

17 **COMMISSIONER EDGAR:** Thank you.

18 Anything else before we proceed with that?

19 **MR. FEIL:** Commissioner, since I represent a
20 number of the entities who have had the motion of
21 voluntarily dismissal, as we go through there may be
22 some adjustments to the positions, and I will call your
23 attention to those as we go through.

24 **COMMISSIONER EDGAR:** Great.

25 **MR. FEIL:** Thank you.

1 **COMMISSIONER EDGAR:** Okay. Well, then let's
2 get started. With that, we will work our way as slowly
3 or as quickly as we can through the draft prehearing
4 order. If there is a comment or a change, go ahead and
5 speak up, since I can't look at you and look at the
6 paper at the same time.

7 So Section I, case background. Any changes or
8 comments?

9 Seeing none, Section II, conduct of
10 proceedings.

11 Section III, jurisdiction.

12 Section IV, procedure for confidential
13 information.

14 **MR. FEIL:** Commissioner, I did have one
15 comment on that. On Page 4 where it discusses that the
16 source of the information must file a request for
17 confidential classification. This is one of those cases
18 where the parties have exchanged a lot of confidential
19 information, and some of them may wish to use it during
20 cross examination or over the course of the hearing.
21 And what I was going to mention is that my expectation
22 is that the parties are going to work out who is best
23 suited for filing the request at the appropriate time.

24 **COMMISSIONER EDGAR:** Okay. Any further
25 comment on that?

1 Anything from our staff?

2 **MS. TAN:** No.

3 **COMMISSIONER EDGAR:** That sounds good. Thank
4 you.

5 Okay. That brings us to Section V, prefiled
6 testimony; exhibits and witnesses. I'll note then that
7 we will, as per our general procedure, limit witness
8 summaries to no more than five minutes.

9 And I note that our staff has recommended, and
10 I believe the draft prehearing order reflects direct and
11 rebuttal testimony being taken up together in the
12 instances that we have a witness providing both. Any
13 concerns, or does that work for all the parties?

14 All right. I'm seeing no concerns, and so I'm
15 going to presume that that will work, and we will ask
16 the prehearing order to be drafted to so reflect.

17 Okay. That brings us to Section VI, order of
18 witnesses. Any requested changes, or does the order as
19 reflected -- okay.

20 Mr. Feil.

21 **MR. FEIL:** I'm sorry, ma'am.

22 **COMMISSIONER EDGAR:** That's okay.

23 **MR. FEIL:** I don't have any comments on the
24 order of witnesses, but consistent with your discussion
25 earlier with Ms. Tan, DeltaCom, Saturn, and the

1 Windstream companies would all be removed from the
2 proffer by section -- or proffer by column. And also,
3 just for clarity, Mr. Stephen Weeks filed testimony only
4 on behalf of the Windstream companies. And since they
5 are dismissed, he would no longer be appearing. We will
6 withdraw his testimony.

7 **COMMISSIONER EDGAR:** Mr. Weeks will be removed
8 from the witness order list, and his prefiled testimony
9 will basically be withdrawn, I guess, would be --

10 **MR. FEIL:** Yes, ma'am.

11 **COMMISSIONER EDGAR:** Okay. And the additional
12 changes that you have mentioned will be reflected.

13 Anything else on Section VI?

14 **MS. RULE:** Commissioner.

15 **COMMISSIONER EDGAR:** Yes, ma'am.

16 **MS. RULE:** This is Marsha Rule. With the
17 withdrawal of Mr. Weeks, Broadwing is considering having
18 Mr. Greene adopt several pages of his testimony. It is
19 already referenced in Mr. Greene's testimony. We have
20 not yet reached a decision whether we wish to adopt
21 those pages that were referenced. If we do, we'll be
22 filing a notice very soon.

23 **COMMISSIONER EDGAR:** Okay. So noted, and
24 thank you for raising it.

25 Okay. That brings us to Section VII, basic

1 positions.

2 Mr. Feil.

3 **MR. O'ROARK:** Commissioner Edgar, excuse me. I
4 did notice --

5 **COMMISSIONER EDGAR:** Oh, okay. Mr. O'Roark.

6 **MR. O'ROARK:** I did notice on
7 Section VI, under Witness Reynolds, it looks like we've
8 just got a (c) there to begin with, I think maybe that
9 should be deleted. Just a minor point.

10 **COMMISSIONER EDGAR:** Okay. It does look like
11 we have a little typo.

12 **MS. TAN:** That is correct. Staff will take
13 care of that.

14 **COMMISSIONER EDGAR:** Okay. Thank you for
15 bringing it to our attention.

16 Now, for Section VII, basic positions. Any
17 changes?

18 **MR. FEIL:** Other than to remove the parties
19 who have been dismissed, no, ma'am.

20 **COMMISSIONER EDGAR:** Okay. That brings us to
21 Section VIII, issues and positions.

22 **MR. KLEIN:** If I may just interject for a
23 moment?

24 **COMMISSIONER EDGAR:** Yes, sir.

25 **MR. KLEIN:** Going back to Section VI, I just

1 noticed that under the testimony of Don Wood, Granite
2 Telecommunications was not listed as one of the
3 proffering parties. Granite and Qwest have reached a
4 settlement in principle, but at this point the testimony
5 is still co-sponsored in part by Granite
6 Telecommunications.

7 **MS. TAN:** Staff will reflect that change also.

8 **COMMISSIONER EDGAR:** Okay. Thank you, Mr.
9 Klein.

10 **MR. KLEIN:** Thank you.

11 **COMMISSIONER EDGAR:** Okay. So I'm going to
12 ask one more time, and that's okay. Anything else on
13 Section VI, order of witnesses?

14 Nothing further at this time. Okay.

15 VII, basic positions; VIII, issues and
16 positions. Any other changes?

17 **MR. FEIL:** I'm sorry, were we going
18 issue-by-issue, Commissioner?

19 **COMMISSIONER EDGAR:** I was not going to. We
20 can if we need to.

21 **MR. FEIL:** I did have a comment on -- or one
22 minor change on the position for TW in Issue 2.

23 **COMMISSIONER EDGAR:** Okay. Can you point me
24 to the page?

25 **MR. FEIL:** That's Page 16. There is a second

1 paragraph for TWTC. At the very end it says July 1,
2 2011. Instead of saying that, it should say the words
3 "that date," for conduct after that date.

4 **COMMISSIONER EDGAR:** Okay. Thank you. And
5 our staff will make note of that.

6 **MS. TAN:** That's correct.

7 **COMMISSIONER EDGAR:** Any other corrections or
8 changes to the specific issues and positions described?

9 **MR. FEIL:** Commissioner.

10 **COMMISSIONER EDGAR:** Yes, Mr. Feil.

11 **MR. FEIL:** If we're cruising through the
12 issues, I did want to note --

13 **COMMISSIONER EDGAR:** We can slow down.

14 **MR. FEIL:** That's okay. I did want to note a
15 couple of other things which are in the position
16 statements, but pertain to parties who have been
17 dismissed.

18 **COMMISSIONER EDGAR:** Okay. Point me to the
19 page, please.

20 **MR. FEIL:** Specifically, Page 22. CLEC group
21 position, it says Budget, Bullseye, and Saturn. Saturn
22 has been dismissed, so I would suggest that we could
23 delete Saturn from there.

24 **COMMISSIONER EDGAR:** Okay.

25 **MR. FEIL:** Also on Page 25 with DeltaCom and

1 Saturn dismissed, there is a change I would suggest to
2 the CLEC position statement. It lists -- let me see how
3 many lines down this is from the top. The seventh line
4 from the top, or, excuse me, sixth line from the top it
5 says, "2005 Respondents named in Qwest's original
6 complaint;" it should have a comma, then "and 2006 for
7 Respondents first name in Qwest's Amended Complaint,"
8 and then the remainder of that sentence can be deleted,
9 because that pertained to Saturn.

10 **MR. SHERR:** Can I step in just for a second,
11 Matt?

12 **COMMISSIONER EDGAR:** In just a second --

13 **MR. SHERR:** Okay.

14 **COMMISSIONER EDGAR:** -- absolutely.

15 Okay. So, Mr. Feil, do I understand you to
16 say on Page 25, at the very end of the seventh line to
17 delete "and June 14th, 2008, for the Respondent named in
18 Qwest's second amended complaint."?

19 **MR. FEIL:** Right. The deletion would be all
20 that language you just mentioned, and June 14th, 2008
21 for Respondent named. Because the only Respondent named
22 in Qwest's second amended complaint was Saturn.

23 **COMMISSIONER EDGAR:** Okay.

24 **MR. FEIL:** So that doesn't pertain. That's
25 why all I was trying to do is put "and" between the

1 proviso regarding December 11th, 2005, for Respondents
2 named in Qwest's original complaint, and October 22 for
3 Respondents named in the first amended complaint.

4 **COMMISSIONER EDGAR:** Okay. I am now clearer
5 on that. Thank you.

6 Yes, go right ahead.

7 **MR. SHERR:** Thank you. Adam Sherr. I just
8 wanted to back up to Page 22. Mr. Feil mentioned --

9 **COMMISSIONER EDGAR:** Okay. Hang on.

10 So any other questions on Page 25, as long as
11 I'm looking at that?

12 **MR. SHERR:** Well, I have one on there, as
13 well.

14 **COMMISSIONER EDGAR:** You do?

15 **MR. SHERR:** Well, it's actually a question for
16 Mr. Feil.

17 **COMMISSIONER EDGAR:** Okay.

18 **MR. SHERR:** Down below under (c)(ii), do we
19 need to remove Budget, DeltaCom, and Saturn from there,
20 as well?

21 **MR. FEIL:** I'm not representing Budget.

22 **MR. SHERR:** Okay. Fair enough.

23 **MR. FEIL:** DeltaCom and Saturn -- on which
24 page are you on now?

25 **MR. SHERR:** That same page, 25.

1 **COMMISSIONER EDGAR:** 25.

2 **MR. FEIL:** Yes, I was going to go to that
3 next.

4 **MR. SHERR:** Okay. I apologize.

5 **COMMISSIONER EDGAR:** That's okay. That's all
6 right.

7 **MR. SHERR:** Would you like me to go back to
8 Page 22, or --

9 **COMMISSIONER EDGAR:** Let's finish with 25
10 while we are on 25.

11 **MR. SHERR:** Fair enough.

12 **COMMISSIONER EDGAR:** Anything else on 25, Mr.
13 Feil?

14 **MR. FEIL:** Other than deleting DeltaCom and
15 Saturn from (ii) under (c), no, ma'am.

16 **COMMISSIONER EDGAR:** Okay.
17 Then we will turn back to 22.

18 **MR. SHERR:** Thank you.

19 **COMMISSIONER EDGAR:** That's okay.

20 **MR. SHERR:** The same place that Mr. Feil made
21 the change removing Saturn, since the Commission has --
22 since you have acknowledged the dismissal of Budget,
23 Budget should be removed, as well.

24 **COMMISSIONER EDGAR:** Okay.

25 **MR. SHERR:** Budget's counsel obviously isn't

1 here today, but they have been removed. And then the
2 same for 25 near the bottom where Saturn and DeltaCom
3 were just removed.

4 **COMMISSIONER EDGAR:** Okay. And to our staff,
5 do you concur?

6 **MS. TAN:** Yes, that's fine.

7 **COMMISSIONER EDGAR:** Okay. Thank you. Any
8 other requested changes or corrections for this section
9 on issues and positions?

10 Yes, Mr. Feil.

11 **MR. FEIL:** Commissioner, I have one other.
12 Issue 9b, Page 31, again, in the CLEC Group position,
13 since Saturn was the only party named in the second
14 amended complaint, you would make the same changes here
15 as I suggested for Page 25.

16 **COMMISSIONER EDGAR:** Basically, the removal of
17 the last two and a half lines beginning in June 14th?

18 **MR. FEIL:** Correct, the deletion of that, and
19 then inserting the conjunction and between the two prior
20 items in the series.

21 **COMMISSIONER EDGAR:** For grammatical
22 correctness?

23 **MR. FEIL:** Yes, ma'am.

24 **COMMISSIONER EDGAR:** Okay.

25 **MS. TAN:** We will also make that change.

1 **COMMISSIONER EDGAR:** Okay. Thank you. Any
2 other points to raise to us or corrections to request
3 for issues and positions, Section VIII?

4 **MR. KLEIN:** Yes. Just one more on Page 29.

5 **COMMISSIONER EDGAR:** Okay. Let me get there.
6 Okay. Go right ahead.

7 **MR. KLEIN:** At the end of the summary of the
8 CLEC group position, the very last line, I believe,
9 July 1st, 2012, should be July 1st, 2011.

10 **COMMISSIONER EDGAR:** And to our staff?

11 **MS. TAN:** We will also make that change.
12 Thank you.

13 **COMMISSIONER EDGAR:** Okay. Thank you.
14 Anything else? Okay. Hearing nothing further, we will
15 move to the next section of the prehearing order,
16 Section IX, the exhibit list.

17 **MR. SHERR:** Commissioner, Adam Sherr again for
18 Qwest. Reviewing this just before the prehearing, I
19 noticed there were a few exhibits which I can identify
20 here that also need the asterisk to notate that they
21 include confidential information. I e-mailed that list
22 to Ms. Tan, if that's sufficient, or I can identify
23 them. There aren't that many of them.

24 **MS. TAN:** Staff will also make those changes.

25 **COMMISSIONER EDGAR:** Okay. Does that work for

1 all of the parties, or would you like to hear the list
2 while we are all gathered together?

3 **MR. FEIL:** I don't think we need to hear it,
4 but if Mr. Sherr would send us a copy of the e-mail,
5 just in case, I would appreciate that.

6 **COMMISSIONER EDGAR:** Mr. Sherr, can you
7 distribute that also to the other parties in addition,
8 of course, to working with our staff?

9 **MR. SHERR:** I would be happy to.

10 **COMMISSIONER EDGAR:** Okay. Thank you.

11 **MS. RULE:** And on a related note, I noticed an
12 asterisk that needs to come out. On Page 41, Exhibit
13 MDG-8 does not actually have any confidential
14 information in it.

15 **MS. TAN:** Could you repeat the --

16 **MS. RULE:** Page 41, Exhibit MDG-8, Minnesota
17 complaint.

18 **MS. TAN:** Staff will also take care of that
19 change.

20 **COMMISSIONER EDGAR:** Thank you.

21 Mr. Feil.

22 **MR. FEIL:** Commissioner, one other comment on
23 the exhibit list. I did have handed to me by
24 Ms. Masterton a list of exhibits that are being
25 withdrawn due to settlement agreements. As to my

1 clients, I have cross-referenced the list Ms. Masterton
2 handed out against what I understood to be withdrawn,
3 and they are consistent. So I just wanted to note that
4 for the record.

5 **COMMISSIONER EDGAR:** Okay.

6 **MS. TAN:** Staff will also be removing those
7 exhibits that are no longer necessary.

8 **COMMISSIONER EDGAR:** Okay. Mr. Shearer.

9 **MR. SHERR:** Yes. There is also, as Mr. Klein
10 mentioned, Granite and Qwest are very, very close to
11 being able to present a notice withdrawing our complaint
12 seeking dismissal as to our complaint as to Granite. At
13 that point when that's possible I will make clear -- we
14 will make clear to Ms. Tan which exhibits need to come
15 off the list. We were not able to do that,
16 unfortunately, prior to today, but we will get there.

17 **COMMISSIONER EDGAR:** I understand, and there
18 is still time.

19 **MR. SHERR:** Yes. Thank you.

20 **MS. TAN:** Staff will also make those changes,
21 should they arise.

22 **COMMISSIONER EDGAR:** Okay. Thank you very
23 much.

24 **MR. O'ROARK:** Commissioner Edgar, one other
25 matter. Verizon Access has prepared a demonstrative

1 exhibit. I have distributed the exhibit to counsel
2 before the conference today, so we would like to include
3 that exhibit in the list, and I can certainly provide
4 that to you and to the Clerk at this point.

5 **COMMISSIONER EDGAR:** And to our staff?

6 **MS. TAN:** Staff would be okay with that.

7 **COMMISSIONER EDGAR:** Okay.

8 **MS. MASTERTON:** I have a question.

9 **COMMISSIONER EDGAR:** Yes, Ms. Masterton.

10 **MS. MASTERTON:** Is this going to be a cross
11 exhibit, or are you just trying to get this as a
12 stipulated exhibit, because --

13 **MR. O'ROARK:** It is a demonstrative exhibit
14 under the Commission's -- (inaudible)

15 **COMMISSIONER EDGAR:** I'm sorry, Mr. O'Roark,
16 we can't -- I apologize, but we can't pick you up for
17 the court reporter and the transcript unless you are
18 speaking into the mike.

19 **MS. TAN:** Commissioner, staff notes that that
20 exhibit would be entered into the Comprehensive Exhibit
21 List rather than this actual exhibit list to the direct
22 testimony in their rebuttal testimony.

23 **COMMISSIONER EDGAR:** Mr. O'Roark.

24 **MR. O'ROARK:** Commissioner, under the
25 Commission's prior order, if a party wants to use a

1 demonstrative exhibit we are required to provide it to
2 the parties by today, and so we are complying with that
3 requirement.

4 **COMMISSIONER EDGAR:** Ms. Masterton.

5 **MS. MASTERTON:** I just thought you had to put
6 notice, but I didn't think -- I don't think we are
7 prepared to agree just to put this in the record. I
8 don't know that we -- I'm not sure that we have had time
9 to review it as to whether we would object if you were
10 going to use it on cross, but just to make it an exhibit
11 I'm not sure we can agree to that.

12 **MR. O'ROARK:** Commissioner Edgar, we just want
13 to comply with the notice requirements of your previous
14 order.

15 **COMMISSIONER EDGAR:** I understand.

16 **MR. O'ROARK:** Certainly whether you want to
17 rule on admissibility today or later is fine with
18 Verizon Access.

19 **MS. HELTON:** Madam Chairman.

20 **COMMISSIONER EDGAR:** Yes, ma'am.

21 **MS. HELTON:** My understanding of demonstrative
22 exhibits, or I should say probably my recollection of
23 demonstrative exhibits is that you don't enter them into
24 the record. They are merely for demonstrative purposes
25 to be helpful in the way that the proceeding is going.

1 So I'm a little bit confused by the discussion. It
2 sounds to me like there is going to be a desire to
3 introduce this into the record, or are you just going to
4 be using it for demonstrative purposes?

5 **COMMISSIONER EDGAR:** And along that same line,
6 and I think Ms. Masterton maybe asked you this, and I'm
7 not sure I heard if you answered it. And I appreciate
8 you bringing it up. That's part of what we are here for
9 is to work our way through these types of questions.

10 What you have that you are terming a
11 demonstrative exhibit, is that something just for
12 opening statements, or is that something that you will
13 be using for testimony or cross?

14 **MR. O'ROARK:** Commissioner Edgar, we would
15 want to be able to use it in the opening statement, or
16 at least reserve the right to use it for that purpose,
17 and perhaps use it for other purposes during the course
18 of the hearing as appropriate. This was not an exhibit
19 to Mr. Reynold's testimony, and I'm not moving that it
20 be made a part of his testimony.

21 So we would want to use it for demonstrative
22 purposes, and I would envision seeking to move it into
23 the record so that it would be clear what we were
24 referring to when we referred to this exhibit during the
25 hearing.

1 **COMMISSIONER EDGAR:** Okay. Well, then let me
2 give this a whirl, and we'll see where it takes us.
3 Then it sounds to me like you have copies that you can
4 distribute to our staff and all the parties now, is that
5 correct?

6 **MR. O'ROARK:** That is correct.

7 **COMMISSIONER EDGAR:** And you are prepared to
8 do?

9 **MR. O'ROARK:** Correct.

10 **COMMISSIONER EDGAR:** Okay. Then our staff
11 will go ahead and take a copy and make that so.

12 **MR. O'ROARK:** I have already done that,
13 Commissioner Edgar.

14 **COMMISSIONER EDGAR:** Okay. And then you are
15 giving us notice that this is something that you are
16 asking leave to use during your opening statement and
17 then reserve the right to use it during testimony, and
18 at that time I think we would handle it as we would with
19 any other exhibit that is offered and deal with whether
20 there are objections to admitting it at that time, which
21 would be a ruling for the presiding officer.

22 **MR. O'ROARK:** That's certainly acceptable to
23 Verizon Access.

24 **COMMISSIONER EDGAR:** Okay.

25 **MS. MASTERTON:** Okay. And that answers my

1 question, as well. Thank you.

2 **COMMISSIONER EDGAR:** Okay. Ms. Helton.

3 **MS. HELTON:** That sounds perfect to me.

4 **COMMISSIONER EDGAR:** Okay. And then while we
5 are still on Section IX, the exhibit list in the draft
6 prehearing order, I understand that our staff is putting
7 together a Comprehensive Exhibit List, and that that
8 will be distributed, et cetera, Ms. Tan?

9 **MS. TAN:** Yes, we'll provide the exhibit list
10 to the parties for their review as soon as possible.
11 And we have also prepared a cover sheet that we would
12 like the parties to use for any additional exhibits at
13 the hearing, and we'd like to pass out the example right
14 now. We will also be sending it to the parties
15 electronically so that they will have it for future use.

16 **COMMISSIONER EDGAR:** Okay. Thank you.

17 Anything else Section IX?

18 **MS. RULE:** I'd like to clarify with staff one
19 thing. Since parties have been settling out and
20 documents are being withdrawn from the case, I'd like to
21 ensure that we each have an opportunity to go back and
22 make sure that our witnesses did not intend to use some
23 of those documents as cross-examination exhibits. So,
24 for example, a discovery response that was filed by a
25 party who has settled out. I want to ensure that we

1 have the opportunity when we review your list to add
2 some of those things back in.

3 **MS. TAN:** Okay.

4 **MS. RULE:** Thank you.

5 **COMMISSIONER EDGAR:** Mr. Feil.

6 **MR. FEIL:** I just had one question on the form
7 exhibit cover page. If the exhibit is confidential, how
8 did you want us to -- just in a red envelope, but with
9 this on it otherwise?

10 **MS. TAN:** Yes. The prehearing order does
11 cover confidential documents that are being used as
12 exhibits. We will also be following up with an e-mail
13 with all the pertinent information, which includes the
14 red folder. But we will be sending that to you shortly.

15 **MR. FEIL:** All right. Thank you.

16 **COMMISSIONER EDGAR:** Okay. I think that
17 brings us to Section X.

18 Are there any proposed stipulations?

19 Ms. Masterton.

20 **MS. MASTERTON:** I don't know if this is the
21 appropriate time, because we haven't filed it yet, but
22 it is sort of in relation to the motion for surrebuttal.
23 We have entered into a -- or we have agreed to a
24 stipulation with Broadwing and we are in the process of
25 finalizing it. We are going to have it in writing and

1 provide it to the Commission before the hearing, but
2 it's not ready yet. So I don't know if it is time to
3 state it. And as a result, we are going to withdraw our
4 motion for surrebuttal, which is, I guess, in the next
5 item.

6 **COMMISSIONER EDGAR:** Okay. So we are right
7 now then going to look at Section X and Section XI
8 together. And I understand that under Section XI,
9 pending motions, that as you have described the motion
10 to file surrebuttal is being withdrawn?

11 **MS. MASTERTON:** Correct.

12 **COMMISSIONER EDGAR:** Thank you. And the
13 prehearing order will reflect that withdrawal.

14 **MS. TAN:** That is correct.

15 **COMMISSIONER EDGAR:** And as to a forthcoming
16 proposed stipulation, Ms. Tan?

17 **MS. TAN:** I believe that it will come later
18 than the prehearing order might be filed.

19 **MS. MASTERTON:** It might. We can't really
20 promise that it will be before that, so --

21 **MS. TAN:** However, if the order has not yet
22 been filed, we will reflect that, also.

23 **COMMISSIONER EDGAR:** We will incorporate, and
24 if not, we can deal with that at the hearing.

25 **MS. MASTERTON:** Thank you.

1 **COMMISSIONER EDGAR:** Okay. Thank you.

2 Okay. I believe that brings us to
3 Section XII, confidentiality again.

4 **MS. TAN:** Staff would note that there is one
5 pending request for confidentiality that we will take
6 care of before the prehearing order is issued.

7 **COMMISSIONER EDGAR:** Thank you. And I believe
8 all others that have already been filed with the
9 Commission have been addressed.

10 **MS. TAN:** That is correct.

11 **COMMISSIONER EDGAR:** That brings me to
12 Section XIII, post-hearing procedures.

13 **MR. SHERR:** Commissioner, Adam Sherr for
14 Qwest.

15 **COMMISSIONER EDGAR:** Yes.

16 **MR. SHERR:** Qwest would, with regard to the
17 post-hearing procedures and more specifically to
18 post-hearing briefs, Qwest does not believe that 40
19 pages is probably going to be adequate, based on my own
20 personal experience prosecuting this case in other
21 states, because of the number of parties that we need to
22 brief you on.

23 There is some commonality on some of the legal
24 issues, but we need to be able to make or summarize our
25 case as to, I think, there are seven or eight companies

1 still left in the case as of this moment. We don't
2 think 40 pages is going to be enough.

3 I looked back to see when we filed our opening
4 brief in the State of Colorado, how long it was, and I
5 believe it was somewhere -- 72 to 75 pages. So our
6 recommendation is that we be allowed to submit a
7 post-hearing brief of 75 pages, if we can do it in less
8 space. And if more parties -- if we are able to settle
9 with more parties, it may allow us to take up less
10 space. But we are concerned that 40 pages is going to
11 be very tight, given the number of parties.

12 **COMMISSIONER EDGAR:** I certainly recognize the
13 number of parties and, therefore, the more number of
14 words necessary to so reflect. I would say 75 sounds
15 long to me. Does our staff have a recommendation?

16 **MS. TAN:** Staff would recommend 55 pages.

17 **COMMISSIONER EDGAR:** How about 60?

18 **MR. SHERR:** Sure. Thank you. We'll live with
19 that.

20 **COMMISSIONER EDGAR:** Okay. Thank you. And
21 please make that change in the last sentence under
22 Section XIII.

23 **MS. TAN:** Yes, we will reflect that change
24 also in the prehearing order.

25 **COMMISSIONER EDGAR:** Thank you.

1 I believe that brings us to Section XIV,
2 rulings. With 15 minutes per side time to be shared for
3 the CLECs, or I believe the staff mentioned to me that
4 there might be one designated spokesperson.

5 **MR. FEIL:** Commissioner, we are going to try
6 to do that so that there aren't four different attorneys
7 from the CLEC side talking. But that's what we proposed
8 to staff, that we are going to try to structure it that
9 way to make it easier to follow. But the 15 minutes we
10 recognize would be shared time for all the CLECs.

11 **COMMISSIONER EDGAR:** Okay. So 15 minutes per
12 side?

13 **MR. FEIL:** Yes, ma'am.

14 **COMMISSIONER EDGAR:** Okay. All right. I
15 think that that covers everything in the draft
16 prehearing order. Before I ask about other matters, is
17 there anything else in this particular draft document
18 that would be helpful to address now?

19 Okay. Hearing none, we will move on. Are
20 there any other matters to address at this time?

21 **MS. TAN:** Yes. Verizon Access and Qwest have
22 requested official recognition for a number of
23 documents.

24 **COMMISSIONER EDGAR:** Who would like to speak
25 to that?

1 **MR. O'ROARK:** Commissioner Edgar, Verizon
2 Access has requested official recognition of an order
3 from the New York Public Service Commission and from the
4 Public Utilities Commission of Colorado, both ruling in
5 Verizon Access' favor in very similar cases.

6 **COMMISSIONER EDGAR:** Yes, sir.

7 **MR. SHERR:** Adam Sherr. Qwest does not object
8 to the official recognition of those orders. Qwest is,
9 however, asking that the Commission also grant official
10 recognition to several other orders of the Colorado
11 Commission that preceded the order that Mr. O'Roark is
12 referencing. We have identified -- we have exchanged --
13 I should say I have provided electronic copies of those
14 four orders to the parties and to staff. I don't know
15 if it is necessary for me to go through each order, but
16 I'm happy to do so. I guess it's up to Mr. O'Roark if
17 he needs further discussion about that.

18 **MR. O'ROARK:** No objection here, Commissioner.

19 **COMMISSIONER EDGAR:** Okay. Then my
20 understanding is that the documents that you have
21 described here, and I know have been discussed with our
22 staff, do meet the requirements as laid out as far as
23 relevance or applicability. And by virtue of being from
24 another forum, therefore, yes, we will take judicial or
25 official recognition of those documents. If one or

1 more -- if any of them are to be used for cross or
2 redirect, please have copies to distribute to the bench
3 and to the parties, et cetera.

4 **MR. SHERR:** Okay. Otherwise, Commissioner,
5 you do not need us to provide you hard copies of them?

6 **COMMISSIONER EDGAR:** I believe that electronic
7 is sufficient. But let me ask our staff if they need
8 more than that.

9 **MS. TAN:** I think that is sufficient. Thank
10 you.

11 **COMMISSIONER EDGAR:** Okay.

12 **MR. SHERR:** Thank you.

13 **COMMISSIONER EDGAR:** Mr. Feil.

14 **MR. FEIL:** Commissioner, I have two other
15 things to note quickly. One, with respect to the
16 parties who have been withdrawn, for example, Mr. Wood
17 is testifying as to parties who are still in the case
18 and some who have been withdrawn. I just wanted to
19 alert you to the fact that the likely way to adjust his
20 testimony would be if he makes those corrections from
21 the stand to reflect that they have been removed from
22 his prefiled, or whether or not we needed to go through
23 that procedure. For example, Qwest testimony has
24 several pages devoted to parties who are no longer in
25 the case, and I just thought we should discuss how we

1 are going to deal with that at the hearing.

2 **COMMISSIONER EDGAR:** Okay. I appreciate you
3 raising that. And if I understand correctly, then it
4 seems like -- and I did discuss this with staff before
5 we -- earlier today. So would you be able to put
6 together an errata that then could be distributed and
7 could be entered or proposed to be entered as an
8 exhibit? Would that be perhaps an efficient and clear
9 way to do with it?

10 **MR. FEIL:** I think that would be efficient,
11 yes, ma'am.

12 **MS. MASTERTON:** Right. We are fine with that.
13 We had had a conversation with staff about it, as well,
14 and that sounds good to us.

15 **COMMISSIONER EDGAR:** Okay.

16 **MS. MASTERTON:** Thank you.

17 **MR. FEIL:** And the second thing, I just wanted
18 to alert you to the possibility that we may have
19 additional requests for official notice coming in, but
20 if we do so, we will follow the proper filing procedure
21 in order to do that.

22 **COMMISSIONER EDGAR:** Okay. Understood.

23 **MS. TAN:** I believe they have to be before the
24 prehearing officer two days before the hearing.

25 **MR. FEIL:** Yes, ma'am.

1 **COMMISSIONER EDGAR:** Okay. And then we will
2 so address.

3 **MR. FEIL:** Thank you.

4 **COMMISSIONER EDGAR:** Mr. O'Roark. Oh, I'm
5 sorry. I thought you were trying to get my attention.
6 Okay. Any other matters?

7 **MR. SHERR:** May I have just a moment, Your
8 Honor?

9 **MS. MASTERTON:** Commissioner?

10 **COMMISSIONER EDGAR:** Yes.

11 **MS. MASTERTON:** Could I just get
12 clarification, because I know we already talked about
13 the stipulated exhibit list that staff was going to be
14 circulating, but just to make sure that if we wanted
15 to -- if we wanted to include some of the discovery
16 responses that we received from other parties on that
17 list, that's part of the process of you all circulating
18 it, is that right?

19 **MS. TAN:** That is correct. And basically what
20 will happen is if everyone who stipulates to that
21 exhibit being put in, or the discovery being put in,
22 then it will be fine. If not, we will note that it is
23 objected to, and then each party will have to put it in
24 during their turn.

25 **MS. MASTERTON:** Okay. Thank you.

1 **COMMISSIONER EDGAR:** Okay. Mr. Klein, any
2 additional comments or questions?

3 **MR. KLEIN:** Yes. Thank you, Commissioner.
4 There is actually one other item I wanted to raise. I'm
5 hopeful that it will not become an issue, as Qwest
6 counsel and I are attempting to meet and confer with
7 regard to the most recent responses to discovery
8 requests that had been served by Bullseye
9 Telecommunications.

10 We foresee the possible need to move to compel
11 responses to that discovery, but it was just received on
12 Monday, and Mr. Sherr and I are attempting to confer
13 with regard to those responses, and hopefully work out a
14 resolution short of the need for a motion to compel.

15 **COMMISSIONER EDGAR:** Mr. Sherr.

16 **MR. SHERR:** Mr. Klein is accurate in that he
17 has reached out to me to have an opportunity to meet and
18 confer. We haven't done that yet. I can't comment on
19 the appropriateness of a motion to compel, since I don't
20 have the details of it at all.

21 **COMMISSIONER EDGAR:** Okay. Ms. Tan.

22 **MS. TAN:** If they file a motion to compel, we
23 will handle it at that time. Thank you.

24 **COMMISSIONER EDGAR:** All right. Thank you,
25 Mr. Klein. Anything else?

1 **MR. KLEIN:** Thank you.

2 **COMMISSIONER EDGAR:** Ms. Tan, would you go
3 ahead and on the record remind us what the dates of the
4 hearing are.

5 **MS. TAN:** The dates are October 23rd through
6 the 25th.

7 **COMMISSIONER EDGAR:** Anything else?

8 All right. Then thank you to our staff.
9 Thank you to all the parties. I know that there is a
10 lot of moving parts here. I appreciate you all working
11 together to streamline as much as appropriate. And we
12 are adjourned.

13 (The Prehearing concluded at 2:07 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
 :
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 8th day of October, 2012.



JANE FAUROT, RPR
FPSC Official Commission Reporter
(850) 413-6732